IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE E. FELDMAN, d/b/a/ LAWRENCE E. FELDMAN and ASSOCIATES,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 06-cv-2540
GOOGLE, INC.,	:	
Defendant.	:	

DEFENDANT GOOGLE, INC.'S,
MOTION FOR ENTRY OF PROTECTIVE ORDER
PURSUANT TO FED.R.CIV.P. 26(c)
AND CONSOLIDATED MEMORANDUM OF LAW

Defendant Google, Inc., by and through its undersigned counsel, respectfully requests that this Court grant its Motion for Protective Order pursuant to Fed.R.Civ.P. 26(c). In support of this Motion, Google avers as follows:

1. On November 7, 2006, at 3:23 p.m., plaintiff Lawrence Feldman ("Feldman") served upon Google's counsel, via facsimile, a Fed.R.Civ.P. 30(b)(6) Notice of Deposition. (The Notice of Deposition is attached hereto as Exhibit "A," and incorporated herein by reference as if set forth in full.) Feldman did not consult counsel for Google before preparing and serving this Deposition Notice.

2. According to the Notice of Deposition, Feldman seeks a deposition of any "[i]ndividual(s) who has or have knowledge about the procedures about what was on the computer screen during the any [*sic*] time periods that plaintiff allegedly signed up to purchase Adwords from Google."

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3. Feldman scheduled the deposition for November 10, 2006, at 2:00 p.m., EST.

4. As per the Notice, Feldman also scheduled the deposition to take place in Elkins Park, Pennsylvania, at his law offices.

5. For the following reasons, Feldman's Notice should be quashed.

6. First, as a general matter, under Fed.R.Civ.P. 26(d), "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)." Instantly, the parties have not yet held their Fed.R.Civ.P. 26(f) conference. Thus, Feldman's Notice violates Rule 26.

7. Second, at a recent hearing, Judge Giles made clear that depositions would *not* be used to adduce the evidence that Feldman seeks relating to Google's pending Motion to Dismiss, but rather, that Google should submit an affidavit instead.[1] Thus, Feldman's Notice ignores the Court's instructions.

8. Third, even if Feldman could properly serve a deposition notice now, Feldman's Notice improperly scheduled Google's designee deposition in Elkins Park, Pennsylvania, at his law offices. Scheduling the deposition at this location runs afoul of the general rule that because "[a] defendant neither chooses the cause of action nor the place of its bringing, … [d]epositions of corporate officers should ordinarily be taken at the corporation's principal place of business." *See, e.g., Sampathachar v. Federal Kemper Life Assurance, Co.*, 2004 WL 2743589 at 2 (E.D.Pa. Nov. 24, 2004), *citing Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979); *Kennedy v. Jennelle*, 1991 WL 24904 at 1 (E.D.Pa. Feb. 22, 1991); Wright & Miller, FEDERAL PRACTICE AND PROCEDURE §2112. Google is headquartered in California, and, therefore, any depositions of its officers or employees should be taken in that forum.

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[1] On that point, the following colloquy took place between the Court and Google's counsel:

> MR. LINDY: Your Honor, if I may. Your Honor referenced discovery and I don't have the answer to this question. But, if defendant Google provides us information by way of written materials as opposed to actual live depositions and things of that nature, I would assume that's okay.
>
> THE COURT: That's all right. And it should be presented in such a way that it is through an affiant who knows what was there, what was -- there shouldn't be any dispute about that.
>
> MS. WEISBLATT: Okay.
>
> THE COURT: Maybe there is going to be a dispute, but there shouldn't be a dispute about what on a certain date was going through the wire or through the air to the internet user because you can pinpoint the date of the acceptance.
>
> MR. LINDY: Yes.
>
> MS. WEISBLATT: Yes.

(*See* November 1, 2006, Transcript of Oral Argument, attached hereto as Exhibit "B.")

9. Fourth, Feldman failed to provide reasonable advance notice for the deposition that he unilaterally scheduled. On November 7, 2006, at 3:23 p.m., Feldman faxed to undersigned counsel his Notice of Designee Deposition, which demands a deposition for November 10, 2006, thus giving Google just over two business days in which to supposedly prepare and produce a witness thousands of miles away. Even apart from the other defects in the Notice, such unreasonably short notice, unilaterally selected by Feldman, would impose an undue and unfair burden upon Google. *See, e.g., Forstater v. State Farm Mut. Auto. Ins. Co.*, 1992 WL 70402 at 2 (E.D.Pa. Mar. 30, 1992); *Stover v. Universal Moulded Products Corp.*, 11 F.R.D. 90, 91 (E.D.Pa.1950) (two days notice unreasonable); *Lloyd v. Cessna Aircraft Co.*, 430 F.Supp. 25, 26 (E.D.Tenn.1976) (same).

10. In summary, given that, (a) Rule 26(d) prohibits Feldman from serving a deposition notice at this time; (b) this Court did not authorize depositions before the parties' Fed.R.Civ.P. 26(f) conference; (c) Feldman's Notice improperly scheduled Google's designee deposition in Pennsylvania; and (d) Feldman failed to afford Google reasonable notice, Google's Notice of Deposition should be quashed.

WHEREFORE, defendant Google respectfully requests this Court to grant its Motion for Entry of Protective Order.

Respectfully submitted,

LINDY & ASSOCIATES, P.C.

By: **_/s/ Jeffrey M. Lindy__**

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